

PATENT

Certificate of Mailing (37 C.F.R. 1.8(a))

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first-class mail in an envelope addressed to: Attention: Office of Petitions, Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date set forth below.

Kim P. Mancuso  
Name of Person Mailing Paper

K. P. Mancuso  
Signature of Person Mailing Paper

4/20/04  
Date of Deposit

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Serial Number: 09/993,820  
Filing Date: 11/16/2001  
Applicant(s): Darin Prizzi  
Entitled: TOWEL HOLDER  
Examiner: Anita M. King  
Group Art Unit: 3632  
Attorney Docket No.: PRIZZI P-1 (1112-7U)

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Attention: Office of Petitions  
Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**PETITION TO WITHDRAW HOLDING OF ABANDONMENT**  
**UNDER 37 C.F.R. §1.181**

Sir:

In response to the Notice of Abandonment mailed March 9, 2004, Applicant hereby petitions the Commissioner to withdraw the holding of abandonment.

On May 7, 2003, a Non-final Rejection was mailed to Allen D. Brufsky, P.A., which was duly docketed on May 19, 2003 in the Flex-Trac Docketing System at the law firm of Ferrell Schultz Carter & Fertel, P.A. and verified by the undersigned attorney. A copy of the duly docketed Non-Final Rejection dated May 07, 2003 is attached hereto as Exhibit A. The Affidavit of Allen D. Brufsky describing Mr. Brufsky's docketing responsibilities is attached hereto as Exhibit B. On August 7, 2003, a timely amendment to the Non-final Rejection dated May 7, 2003 was hand-delivered by the undersigned attorney to the Examiner responsible for this application. A copy of the amendment showing the U.S.P.T.O. stamped receipt is attached hereto as Exhibit C.

A Notice of Non-Compliant Amendment (Voluntary Revised Practice), dated August 26, 2003, was apparently mailed but not received by the undersigned attorney. A copy of the facsimile Notice of Non-Compliant Amendment (Voluntary Revised Practice), dated August 26, 2003 is attached hereto as Exhibit D.

Furthermore, a search of the file jacket and the docket records for the subject Application indicates that the Office communication was not received prior to April 12, 2004. The attached Affidavit of Allen D. Brufsky, who was the person responsible for verifying the receipt and docketing of all U.S.P.T.O. correspondence relating to the subject Application, supports this fact.

On March 9, 2004, a Notice of Abandonment was mailed indicating that Patent Application Serial Number 09/993,820 was abandoned for failure to reply to an Office Action notice allegedly mailed on August 26, 2003 to Allen D. Brufsky, P.A. After a request to Examiner Anita M. King, a facsimile copy of a Notice of Non-Compliant Amendment (Voluntary Revised Practice), dated August 26, 2003, was first received on April 12, 2004,

indicating that a complete listing of all of the claims was not present in the amendment paper, and that the listing of the claims did not include the text of all claims currently under examination.

Based on the above and as set forth in the attached Affidavit of Allen D. Brufsky, Applicant and Applicant's counsel did not receive the aforementioned Notice of Non-Compliant Amendment (Voluntary Revised Practice) until it was faxed on April 12, 2004.

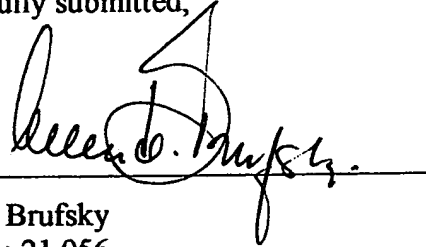
The attached docket report (Exhibit E) shows an entry for the last docketed activity for the subject Application. As is set out in Exhibit E, the last entry is dated August 11, 2003, more than two weeks before the Notice of Non-Compliant Amendment (Voluntary Revised Practice) was allegedly mailed. If such a Notice had been received, the last docket entry would have reflected this receipt.

Consequently, the Applicant, through undersigned counsel and pursuant to 37 C.F.R. § 1.181 and M.P.E.P. 711.03(c) subsection II, hereby submits this Petition with supporting documentary evidence including the corresponding copy of the docket report, and without a fee (as no fee is required) establishing without question that the Notice of Non-Compliant Amendment (Voluntary Revised Practice), dated August 26, 2003, was never timely received by Applicant's counsel prior to the abandonment of the subject Application..

Also enclosed herewith is a Response to the Notice of Non-Compliant Amendment (Voluntary Revised Practice) including a revised Amendment complying with the guidelines of the voluntary revised amendment practice.

Therefore, in light of the above, Applicant respectfully requests that the Commissioner withdraw the holding of abandonment and allow the subject Application to be examined.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Allen D. Brufsky", is written over a horizontal line.

Date:

Allen D. Brufsky  
Reg. No.: 21,056  
Attorney for Applicant(s)  
Allen D. Brufsky, P.A.  
475 Galleon Drive  
Naples, FL 34102  
Tel: (239) 261-9393  
Fax: (239) 261-9696

19066

This is the third office action for application number 09/993,820, Towel Holder, filed on November 16, 2001.

***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on February 12, 2003 has been entered.

***Cancellations of Claims***

Claim 10 has been canceled per applicant's request in Paper No. 7, dated February 12, 2003.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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Claim 9 is redundant and thus, is indefinite. The limitations cited in claim 9 are previously cited in claim 7 from which claim 9 indirectly depends.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-5 and 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,611,123 to Prizzi in view of U.S. Patent 5,362,018 to Darr et al., hereinafter, Darr or U.S. Patent 5,782,090 to Locke. Prizzi discloses in combination a releasable tube holder (10) and a longitudinal support (40), the tube holder comprising: a circular plastic tube split lengthwise into longitudinally mirror image straight halves forming two opposed clamping members (16, 18) joined together at across a first pair of split edges (20) and separated by a second pair of split edges (20), each of the clamping members provided with at least one separated handle member (22) positioned on one of the clamping member halves and opposite another handle member on the other clamping member half, the clamping member halves being hingedly connected by a living hinge (Figs. 4 and 5) between the first pair of split edges to activate opening and closing of the opposed clamping members and separation and closing of the second pair of split edges which engage and are secured to the support by applying and removing pressure on the oppositely positioned handle members; the longitudinal support supporting a towel (38); the plastic tube having an interior surface (36) which has been serrated; wherein the support is a beach chair having a longitudinal top

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support; wherein the hinge member extends along and in the direction of the axis of the one pair of straight across split edges hingedly connected; and wherein the hinge member extends axially along the first pair of split edges.

Prizzi discloses the claimed invention except for the limitation of the living hinge being formed by a groove. Darr also teaches that it is known in the clamping art to have a clamp/clip (30, Fig. 3) including a pair of clamping members (42) which are joined by a living hinge (40) at one pair of split edges and wherein the living hinge is formed by a groove (38). Locke teaches that it is known in the clamping art to have a clamp (10) including a pair of clamping members (20 and 30) hingedly connected by a living hinge (18) formed by a groove. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the living hinge in Prizzi to have been formed by a groove as taught by Darr and Locke for the purpose of providing an alternative mechanically equivalent means to permit bending and greater flexibility between the pair of joined clamping members.

Prizzi in combination with Darr or Locke disclose that the plastic tube is formed from polyvinyl chloride or similar plastic material. Prizzi discloses the claimed invention except for the limitation of the plastic tube being formed of polypropylene. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the material of the plastic in Prizzi to be polypropylene for the purpose of providing an alternative mechanical equivalent material of similar rigidity.

***Allowable Subject Matter***

Claim 6 is allowed.

***Response to Arguments***

Applicant's arguments filed February 2, 2003 have been fully considered but they are not persuasive. The Prizzi reference now in combination with the Darr and/or Locke references disclose the instant invention of claims 1-5 and 7-9.

In regards to applicant's arguments that neither Darr nor Locke discloses a living hinge formed by a groove between a pair of split edges, both Darr and Locke meet this limitation. Darr and Locke both disclose a pair of split edges (as disclosed by the embodiment in Fig. 5 of applicant's instant invention) connected together by a living hinge (40 in Darr and 18 in Locke) formed by a groove (Fig. 3 of Darr and Fig. 5 of Locke) for providing greater flexibility of the clamping member.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anita M. King whose telephone number is (703) 308-2162. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leslie A. Braun can be reached on (703) 308-2156. The fax phone numbers for the organization where this application or proceeding is assigned are (703)



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308-3597 for regular communications and (703) 308-3519 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-2168.

Anita M. King  
Primary Examiner  
Art Unit 3632

May 5, 2003

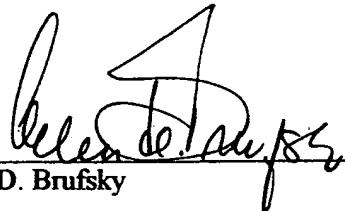
**AFFIDAVIT OF ALLEN D. BRUFSKY**

STATE OF FLORIDA       )  
COUNTY OF               )

1. I am a partner at Allen D. Brufsky, P.A. and previously affiliated with the law firm of Ferrell Schultz Carter & Fretel, P.A. ("Ferrell Schultz").
2. I was responsible for overseeing the docketing of all correspondence with the U.S. Patent and Trademark Office for applications having the applicant name "Darin Prizzi" and the client series identified as "PRIZZI" from the date the applications were filed until those files were removed from the office of Ferrell Schultz in the month of Sept, 2003.
3. If a Notice of Non-Compliant Amendment (Voluntary Revised Procedure) had been received by firm for U.S. Patent Application No. 09/993,820 on or about August 26 2003, it would have been routed to my clerk, and I would have personally verified its proper docketing in the Ferrell Schultz docketing system.
4. The Notice of Non-Compliant Amendment for U.S. Patent Application No. 09/993,820, dated August 26, 2003, was not received until April 12, 2004.

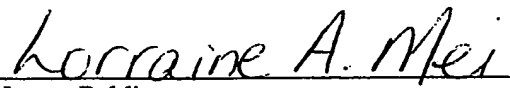
I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 USC 1001 and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

FURTHER, AFFIANT SAITH NOT.

  
Allen D. Brufsky

STATE OF FLORIDA       )  
COUNTY OF               )

The foregoing instrument was sworn to and subscribed before me this 20<sup>th</sup> day of April, 2004, by Allen D. Brufsky, who is personally known to me.

  
Notary Public  
(Print Name of Notary Public)

My Commission Expires:

19220





EXHIBIT "B"

Commissioner of Patents and Trademarks, Washington, D.C. 20231

Sir: Please acknowledge receipt of the following papers by stamping and returning this card:

Applicant: Darin Prizzi

Title or Mark: TOWEL HOLDER

Our Ref: PRIZZI P-1 Serial No: 09/993,820 Filing Date: 11/16/2001

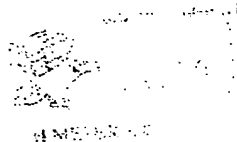
☒ Patent ☐ Trademark Papers:

- |  |  |
|--|--|
| <input type="checkbox"/> Application - No. of Pages _____                | <input type="checkbox"/> Petition for Extension of Time - Fee \$ _____ |
| <input type="checkbox"/> Claims - No. of Claims _____                    | <input type="checkbox"/> Issue Fee \$ _____                            |
| <input type="checkbox"/> Drawings - No. of Sheets _____                  | <input type="checkbox"/> Maintenance Fee \$ _____                      |
| <input type="checkbox"/> Declarations/Power of Attorney                  | <input type="checkbox"/> \$8 & \$15 Affidavit                          |
| <input type="checkbox"/> Assignment and Recordation Cover Sheet          | <input type="checkbox"/> Transmittal Letter                            |
| <input type="checkbox"/> Filing Fee \$ _____                             | <input type="checkbox"/> Check - Amount \$ _____                       |
| <input checked="" type="checkbox"/> Amendment                            | <input type="checkbox"/> Associate Power of Attorney                   |
| <input type="checkbox"/> Submission of Missing Parts Fee \$ <u>16.80</u> | <input checked="" type="checkbox"/> Postcard Acknowledge Receipt       |
| <input type="checkbox"/> Information Disclosure Statement w/refs.        | <input type="checkbox"/> Certificate of Mailing                        |
| <input type="checkbox"/> Deposit for Account                             | <input type="checkbox"/> Other _____                                   |
| <input type="checkbox"/> Express Mail Label No. _____                    |  |

Attorney: Allen D. Brufsky

*Delivered by hand to Examiner*

Date Mailed: August 17, 2003



Allen D. Brufsky, P. A.

FERRELL SCHULTZ  
P.O. BOX 01-9693  
201 S. BISCAYNE BLVD., 34TH FLOOR  
MIAMI, FLORIDA 33131-4325

EXHIBIT "C"

# Best Available Copy

U.S. Patent Case (Record Locked to allow you to update)

Case Management: Sr. Atty. [ADD] Pr. Atty. [ADD] Admin. [ADD]

Application Type: ☐ Provisional ☐ Utility ☐ Design ☐ Plant

Case No. [01/2101] Client ID [01234] Client Date [01/21/01]

App. Serial No. [01/2101] Filing Date [01/21/01] Status [Active]

Title [Patent Application]

Date Iss/Abs. [01/21/01] Patent No. [01234] Patent Expiration Date [01/21/11]

☐ Expiration Date Adjusted

Reminders List for this Case

Item	Who	Due Date
Have we spoken with Examiner - USA	DMV	8/21/2003

There are 1 Reminders Items for this Case

Country [All]

First Filed Location: ☒ U.S. ☐ Foreign Country [ ] Date [ ] State [ ]

CAUTION DMV

EXHIBIT "E"



## UNITED STATES PATENT AND TRADEMARK OFFICE

 PATENT OFFICE  
 WASHINGTON, DC 20230  
 www.uspto.gov

Paper No.

## Notice of Non-Compliant Amendment (Voluntary Revised Practice)

The amendment filed 8/2/03 under the voluntary revised amendment practice guidelines<sup>1</sup>, published in the Official Gazette on February 25, 2003 (*Amendments in a Revised Format Now Permitted*, 1267 Off. Gazette 106), does not fully comply with minimal requirements of the voluntary practice. In order for the amendment to be entered, it must either (1) comply with the guidelines of the voluntary revised amendment practice (which practice invokes waivers of certain 37 CFR 1.121(a)-(d) requirements) or (2) comply with current 37 CFR 1.121 requirements.

THE FOLLOWING ITEM(S) IN APPLICANT'S AMENDMENT CAUSES THE AMENDMENT TO BE NON-COMPLIANT WITH THE VOLUNTARY REVISED AMENDMENT PRACTICE.

- ☒ 1. A complete listing of all of the claims is not present in the amendment paper.
- ☒ 2. The listing of claims does not include the text of all claims currently under examination.
- ☐ 3. The claims of this amendment paper have not been presented in ascending numerical order.
- ☐ 4. Each claim has not been provided with a status identifier, and, as such, the individual status of each claim cannot be determined.
- ☐ 5. Other: \_\_\_\_\_

LIE: Check one of the following boxes:

- ☐ **PRELIMINARY AMENDMENT:** Applicant is given ONE MONTH from the mail date of this letter to re-submit the amendment in compliance with either the guidelines of the revised amendment practice or current 37 CFR 1.121. Failure to comply with either the current 37 CFR 1.121 practice or with the voluntary practice will result in non-entry of the amendment and examination on the merits will commence without entry of the originally proposed preliminary amendment. This notice is not an action under 35 U.S.C. 132, and this ONE MONTH time limit is not extendable.
- ☒ **AMENDMENT AFTER NON-FINAL ACTION:** Since the above-mentioned reply appears to be a *bona fide* response, applicant is given a TIME PERIOD of ONE MONTH from the mailing of this notice within which to re-submit an amendment which complies with either the voluntary practice guidelines or current 37 CFR 1.121 in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD ARE AVAILABLE UNDER 37 CFR 1.136(a).

**[ Signed by Team Leader ]**

Team Leader

<sup>1</sup> For further explanation of the guidelines of the revised amendment format, please see the posted notice and sample amendment format at: <http://www.uspto.gov/web/offices/pac/dapp/opla/prognotice/officeflyer.pdf> and <http://www.uspto.gov/web/offices/pac/dapp/opla/prognotice/formatrevamdtprc.pdf>.

March 26, 2003



## UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address COMMISSIONER FOR PATENTS  
RD. Box 1800  
Alexandria, Virginia 22313-1800  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/993,820	11/16/2001	Darin Prizzi	PRIZZI - 2	8704

7390 08/26/2003

ALLEN D. BRUFISKY, ESQ.  
ALLEN D. BRUFISKY, P.A.  
8930 BAY COLONY DRIVE  
UNIT # 604  
NAPLES, FL 34108

EXAMINER

KING, ANITA M

ART UNIT

PAPER NUMBER

3632

DATE MAILED: 08/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

EXHIBIT "D"